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12 September 2024

Dear Mr Bevan,

PLANNING ACT 2008

APPLICATION FOR DEVELOPMENT CONSENT FOR THE BRAMFORD TO TWINSTEAD REINFORCEMENT PROJECT

1. Introduction

- 1.1. I am directed by the Secretary of State for Energy Security and Net Zero (“the Secretary of State”) to advise you that consideration has been given to the Examining Authority’s (“ExA”) report dated 12 June 2024. The ExA consisted of four examining inspectors: Andrew Mahon, Julie de-Courcey, John McEvoy and Jason Rowlands. The ExA conducted an Examination into the application submitted on 27 April 2023 (“the Application”) by National Grid Electricity Transmission plc (“the Applicant”) for a Development Consent Order (“DCO”) (“the Order”) under section 37 of the Planning Act 2008 (“PA2008”) for the Bramford to Twinstead Reinforcement and associated development (“the Proposed Development”). The Application was accepted for Examination on 23 May 2023. The Examination began on 12 September 2023 and closed on 12 March 2024. The Secretary of State received the ExA’s Report on 12 June 2024.
- 1.2. The Order, as applied for, would grant development consent for the reinforcement of the transmission network between the existing Bramford substation and Twinstead Tee through the construction and operation of 29km of new 400 kilovolt (kV) transmission line, comprising of approximately 18km of overhead line, with approximately 50 pylons; approximately 11km of underground cable with associated joint bays and above-ground link pillars. The works will also include four cable sealing end compounds to facilitate the transitions from overhead line to underground cable, each with security fencing, electrical equipment, support structures, a control building and an access track; the removal of 27km of existing overhead transmission line and associated pylons and; a new grid supply point substation with access,

replacement pylons, transformers, switchgear and other electrical equipment, a sealing end compound, underground cabling, office and welfare facilities, and utility connections. The Associated Development includes modifications to some existing pylons; new temporary and permanent accesses to the public highway; temporary construction compounds with laydown and storage areas, offices and welfare facilities; temporary structures and launch and reception drilling pits at crossings of water courses, rights of way, highways and a railway line; temporary and permanent culverts and land drainage features and; land required for mitigation, compensation and Biodiversity Net Gain (BNG) [ER 1.3.2]. Further detail is provided by the Applicant in Chapter 4 of the ES, Project Description, [APP-072].

- 1.3. The Applicant also seeks compulsory acquisition (“CA”) and temporary possession (“TP”) powers, set out in the draft Order submitted with Application.
- 1.4. Published alongside this letter on the Planning Inspectorate’s National Infrastructure Planning website¹ is a copy of the ExA’s Report of Findings and Conclusions and Recommendation to the Secretary of State (“the ExA’s Report”). The ExA’s findings and conclusions are set out in Chapters 3-6 of the ExA’s Report, and the ExA’s summary of conclusions and recommendation is at Chapter 8. All numbered references, unless otherwise stated, are to paragraphs of the ExA’s Report [“ER *.*.*”].

2. Summary of the ExA’s Report and Recommendation

- 2.1. The principal issues considered during the Examination on which the ExA has reached conclusions on the case for development consent are set out in the ExA’s Report under the following broad headings:
 - need case;
 - alternatives;
 - air quality and emissions;
 - biodiversity and ecology;
 - good design;
 - greenhouse gas emissions;
 - historic environment;
 - landscape and views;
 - land use, soil and geology;
 - noise and vibration;
 - public rights of way;
 - socio-economics and community issues;

¹ <https://national-infrastructure-consenting.planninginspectorate.gov.uk/projects/EN020002>

- the water environment;
- traffic, transport and highway safety;
- cumulative effects;
- Habitats regulation assessment (HRA)
- land rights and related matters and;
- Development consent order.

2.2. The ExA recommended that the Secretary of State should grant consent. The recommendation in section ER 8.2.1 (page 326 of the ExA report) is as follows:

“The Proposed Development meets the tests in s104 of the PA2008 and concludes that the case for Proposed Development has been made. It recommends that the Secretary of State makes The National Grid (Bramford to Twinstead Reinforcement) Order 20[XX] in the form recommended at Appendix D to this Report”.

2.3. This letter is intended to be read alongside the ExA’s Report and except as indicated otherwise in the paragraphs below, the Secretary of State agrees with the findings, conclusions and recommendations of the ExA as set out in the ExA’s Report, and the reasons for the Secretary of State’s decision are those given by the ExA in support of his conclusions and recommendations.

3. Summary of the Secretary of State’s Decision

3.1. Section 104(2) of PA2008 requires the Secretary of State, in deciding an application, to have regard to any relevant National Policy Statement (“NPS”). Subsection (3) requires that the Secretary of State must decide the application in accordance with the relevant NPS except to the extent that one or more of subsections (4) to (8) apply. The Secretary of State’s consideration of which NPS is relevant is considered further at paragraph 4.2 below.

3.2. On the 17 July 2024 the Secretary of State issued a letter seeking further information on several matters. The Applicant was requested to provide information regarding the status of the negotiations for commercial side agreements with TC East Anglia OFTO Limited, East Anglia THREE Limited and Scottish Power Renewables Limited. The letter included a request for the Applicant to provide further information on whether protective provisions had been agreed with Network Rail following the conclusion of the Examination.

3.3. On 7 August 2024, the Secretary of State received a response from the Applicant confirming that the Interface Agreement between the Applicant, East Anglia THREE Limited and Scottish Power Renewables Limited is now complete. Shepherd and Wedderburn LLP submitted a response on 17th July, on behalf of Scottish Power Renewables Limited and its subsidiary East Anglia THREE Limited, containing formal notice of the complete withdrawal of East Anglia THREE Limited’s existing representations regarding the Application. The Applicant’s letter of 7 August 2024 also noted that protective provisions had not yet been agreed with Network Rail. In its own response of 7 August 2024, Network Rail confirmed that negotiations between the two parties on the matter of protective provisions had not progressed since the conclusion of the Examination.

- 3.4. In his letter dated 17 July 2024, the Secretary of State also invited the Applicant and all Interested Parties to provide any final updates on compulsory acquisition matters. The Applicant's response stated that four permanent acquisition agreements and forty Heads of Terms are still under negotiation.
- 3.5. In an email dated 6 September 2024, Bryan Cave Leighton Paisner LLP confirmed on behalf of the Applicant that the Interface Agreement with TC East Anglia One OFTO Limited is now complete.
- 3.6. Due to an administrative oversight, two of the APs listed as Category 1 persons in the Book of Reference were not in receipt of the Secretary of State's consultation letter, dated 17 July 2024. This was rectified by sending the APs a hard copy of the consultation letter in the post on the 8 August 2024 with an accompanying letter inviting them to respond.
- 3.7. The Secretary of State has considered the overall planning balance and, for the reasons set out in this letter, has concluded that the public benefits associated with the Proposed Development outweigh the harm identified, and that development consent should therefore be granted.
- 3.8. The Secretary of State has decided under section 114 of PA2008 to make, with modifications, an Order granting consent for the proposals in the Application. This letter is a statement of the reasons for the Secretary of State's decision for the purposes of section 116 of PA2008 and the notice and statement required by regulations 31(2)(c) and (d) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 ("the EIA Regulations").
- 3.9. In making the decision, the Secretary of State has complied with all applicable legal duties and has not taken account of any matters which are not relevant to the decision.

4. The Secretary of State's Consideration of the Application

- 4.1. The Secretary of State has considered the ExA's Report and all other material considerations, including representations received after the close of the ExA's Examination and responses to his consultation letter of 17 July 2024. 138 Relevant Representations ("RRs") were made in respect of the Application by statutory authorities, businesses, non-governmental organisations, and individuals. Written Representations, responses to questions and oral submissions made during the Examination were also taken into account by the ExA. The Secretary of State has had regard to the two Local Impact Reports ("LIR"), one jointly submitted by Braintree District Council and Essex County Council, [REP1-039] and one jointly by Suffolk County Council and Babergh and Mid Suffolk District Councils [REP1-045] [ER 2.3.1], environmental information as defined in regulation 3(1) of the EIA Regulations and to all other matters which are considered to be important and relevant to the Secretary of State's decision as required by section 104 of PA2008 including relevant policy set out in the NPSs EN-1 and EN-5.
- 4.2. The Energy White Paper, *Powering Our Net Zero Future*, was published on 14 December 2020. It announced a review of the suite of energy NPSs but confirmed that the current NPSs, designated in 2011, were not being suspended in the meantime. The ExA has referred to these 2011 NPSs as NPS EN-1 and NPS EN-5 and this letter refers to them in the same way. Draft NPSs were published on 6 September 2021 and subject to a consultation which closed on 29 November 2021. Updated versions of these draft NPSs

were published on 30 March 2023 and subject to a further consultation which closed on 23 June 2023. The ExA makes reference to the March 2023 draft NPSs throughout the Examination and Report as draft EN-1 and draft EN-5. Revised draft NPSs were released on 22 November 2023 and designated in Parliament on 17 January 2024 (“the 2024 NPSs”). The ExA makes reference to the 2024 NPSs throughout the Examination and Report, and was of the view that 2024 EN-1 and 2024 EN-5 could be important and relevant.

- 4.3. The Secretary of State has also had regard to the British Energy Security Strategy (“BESS”) published on 7 April 2022, which outlined the steps to accelerate the government’s progress towards achieving Net Zero by 2050 and a long-term shift in delivering cheaper and cleaner power.
- 4.4. The Secretary of State agrees with the ExA’s conclusions and the weight it has ascribed in the overall planning balance in respect of the following issues:
- need for the Proposed Development – great positive weight;
 - air quality and emissions – neutral weight;
 - biodiversity and ecology – moderate negative weight;
 - good design – little negative weight;
 - greenhouse gas emissions – little negative weight;
 - historic environment – moderate negative weight;
 - landscape and views – little negative weight;
 - land use, soil and ground conditions – moderate negative weight;
 - noise and vibration – little negative weight;
 - public rights of way – moderate negative weight;
 - socio-economics and community issues – neutral weight;
 - the water environment – neutral weight;
 - traffic, transport and highway safety – neutral weight; and
 - cumulative effects – little negative weight.
- 4.5. The weights ascribed by the Secretary of State to the planning issues raised in the ExA’s Report do not differ from those ascribed by the ExA. However, there are some matters for which the Secretary of State has further commentary to add, beyond that set out in the ExA’s Report. The paragraphs below set out the Secretary of State’s consideration of those matters for which further detail is required.

Need Case

ExA's conclusions

- 4.6. The ExA's conclusions are set out at ER 3.2.23 to 3.2.29. The ExA is satisfied that the Proposed Development is needed to achieve the national objectives of meeting current and future demand for electricity, increasing energy security, and reducing emissions associated with electricity generation to meet decarbonisation targets. In accordance with NPS EN-1, it therefore adopted a starting point of a presumption in favour of recommending a grant of consent unless other policies in the relevant NPSs indicated that development consent should be refused [ER 3.2.23]. Having tested the associated evidence, the ExA notes that it is content that the grid supply point substation remains part of the Proposed Development and is mindful that the planning permission granted under the TCPA (Town and Country Planning Act 1990) is a fallback position for the Applicant that would allow an early start on its construction [ER 3.2.24].
- 4.7. In the context of relevant policy, especially the extant NPS EN-1, the ExA attributes great weight to the contribution that the Proposed Development would make toward satisfying the urgent need for new electricity network infrastructure in the UK [ER 3.2.25].
- 4.8. The need for new electricity network infrastructure is described by the ExA as urgent and important, not only to meet increased electricity demand and support the transition to Net Zero, but also to maintain energy security and increase the resilience of the transmission network [ER 3.2.27].
- 4.9. The 2024 EPS EN-1 adds that it is especially important that the Secretary of State considers network projects as elements of a coherent and strategically necessary system. It concludes that there is a critical national priority for the provision of nationally significant low carbon infrastructure, the definition of which includes all power lines in the scope of the 2024 NPS EN-5, including network reinforcement and upgrade works, and associated infrastructure such as substations [ER 3.2.28]. The ExA notes this strengthened policy position in the 2024 NPS EN-1, though this would not have changed its general position on the need case [ER 3.2.29].

The Secretary of State's Conclusion

- 4.10. The Secretary of State has reviewed the need case and the supporting evidence summarised in the ExA's Report. He has also considered the important and relevant policies set out in the 2011 NPSs and the recently designated 2024 NPSs.
- 4.11. The Secretary of State considers that the Proposed Development complies with the relevant NPSs. NPS EN-5 at paragraph 2.2.2 states that the requirement for a line may be the result of the need for more strategic reinforcement of the network. NPS EN-1 at paragraph 3.7.2 acknowledges the need to connect to new sources of electricity generation as a key component of the need for new electricity network infrastructure. NPS EN-1 at paragraph 3.7.3 further states that new electricity network infrastructure projects, which contribute to the reliability of the national energy supply, provide crucial national benefits.
- 4.12. The Secretary of State agrees with the ExA's conclusions and that, subject to consideration of specific impacts, there would be no conflict in principle between the Proposed Development and national or local planning policy. The Secretary of State agrees that there

is an urgent need for the Proposed Development and ascribes this great positive weight in the planning balance.

Biodiversity and Ecology

The ExA's conclusions

4.13. The ExA's conclusions are set out at ER 3.5.148 to 3.5.179. The ExA is satisfied that, by the end of the Examination, the Applicant's biodiversity assessment included all the matters identified in NPS EN-1 and that there is sufficient information for the Secretary of State to reach a conclusion on biodiversity and ecology matters [ER 3.5.148]. The ExA also notes that NPS EN-5 additionally requires an applicant to consider impacts of overhead lines on large birds and is content that the Applicant properly considered such matters but found no likelihood of significant effects [ER 3.5.149]. During the Examination, the ExA used all relevant submitted evidence to test the Applicant's conclusion that there would be no likely significant residual effects in relation to biodiversity during the construction or operation of the Proposed Development. [ER 3.5.151].

Biodiversity Net Gain

4.14. The ExA notes that while BNG was not mandatory for this application, it has been offered by the Applicant and considered outside the EIA process. Whilst there was some initial confusion about the status of the BNG proposals, and how they could be distinguished from other proposals for habitat mitigation, reinstatement and compensation, the ExA is content that this was clarified during the Examination [ER 3.5.152]. Noting that Requirement 13 of the DCO requires the undertaker to submit written evidence that demonstrates how at least ten per cent in biodiversity gain is to be delivered before the transmission electric line is brought into use, the ExA is satisfied that a significant biodiversity enhancement could be secured locally [ER 3.5.153].

Bat surveys/licence and Dormouse Licence

4.15. The ExA notes the differing opinions of the Applicant and the local authorities in relation to securing the details of necessary bat mitigation measures through the control documents. It concurs with the position of the Applicant that, should DCO consent be granted, a final bat licence would need to be submitted for Natural England approval. This would have to include full and updated details of surveys, impacts and mitigation measures. The ExA notes the letter of no impediment from Natural England and considers that reliance can be placed on the legislation and rigorous licensing process and that it is not necessary for the Applicant to duplicate the detailed information in the CEMP or REAC [ER 3.5.154].

4.16. The ExA also pursued the matter of a letter of no impediment in relation to hazel dormouse to provide adequate reassurance before the close of Examination that protected species licensing could be relied on to secure appropriate mitigation. It is satisfied that the submission of updated ES Appendix 7.8, Annex A, Dormouse Draft Licence [REP9-022] deals with this matter and that there are no outstanding issues in relation to dormouse [ER 3.5.155].

Arger Fen SSSI

4.17. The ExA also states that it is content that Natural England's various representations, discussions at ISH4 ([EV-040] to [EV-043]) and the Applicant's amendments to ES Chapter 7 [REP6-009] are sufficient to demonstrate that the potential for an impact was properly

considered through a groundwater dependent terrestrial ecosystem assessment, and that no significant effect was identified [3.5.156].

Hintlesham Woods SSSI: transposition and the swathe

- 4.18. The ExA has taken account of its recommended changes in the DCO in relation to the management plans, and the improvements made to the LEMP over the course of the Examination in respect of the protection of Hintlesham Woods SSSI, including securing the restriction of works to the existing maintenance swathe, a requirement for detailed plans for vegetation clearance and management to be discussed with the appropriate parties prior to commencement, and the further involvement of the RSPB as site manager [ER 3.5.159].
- 4.19. It notes and agrees with the Applicant's contention that the extent and nature of the management of the coppiced swathe during transposition and ongoing maintenance would be similar to those experienced during routine maintenance of the existing overhead line [ER 3.5.160]. Whilst the ExA is generally content that the stated intentions would deliver sufficient mitigation to avoid adverse effects on Hintlesham Woods and the SSSI, it nevertheless considers there to be a small possibility that a temporary minor, but not significant adverse impact could occur in practice if the Proposed Development was to be consented and has factored this into its overall conclusion [ER 3.5.161].

Hintlesham Woods SSSI: other impacts and monitoring

- 4.20. The ExA has given careful consideration to other possible impacts on Hintlesham Woods and the SSSI, particularly from construction noise and disturbance. It has reviewed the submissions from all parties in relation to this matter, including the Applicant's technical note [REP3-057] and the commitments set out in the REAC [REP9-037] [ER 3.5.162]. With the mitigation and monitoring measures in place, the ExA is content with the conclusion of the Applicant's assessment in relation to noise and disturbance at Hintlesham Woods SSSI that no significant effects are anticipated [ER 3.5.164].

Impacts on other ancient woodland and standing advice

- 4.21. The ExA recognises and concurs with the concerns of the Woodland Trust, Natural England and the local authorities that only a 15m buffer has been allowed for ancient woodlands from the Proposed Development, rather than the 30m recommended in Natural England and Forestry Commission standing advice [ER 3.5.165].
- 4.22. The ExA notes that, in some instances, the works adjacent to ancient woodland would comprise planting rather than construction works per se. Nevertheless, the ExA does consider that temporary construction effects on ancient woodland adjacent and close to the Order Limits from factors such as dust, discharge to and pollution of surface and groundwater, air quality changes due to plant and traffic, and disturbance (including unintentional and intentional access by construction workers) due to the lack of a suitable buffer that respects the standing advice could be greater than those concluded by the Applicant, but does not consider it likely that they would be significant in themselves [ER 3.5.165].
- 4.23. The ExA concurs with the Applicant's conclusion that the Proposed Development would not cause any permanent fragmentation of ancient woodland, or any material ecological separation from adjacent semi-natural habitats [ER 3.5.167].

Impacts on veteran trees

- 4.24. The ExA is satisfied that a precautionary assessment was made for veteran trees within the Order Limits, and that progress was made, and measures secured to provide compensation for the loss of veteran tree T378. The ExA acknowledges that the standing advice will not be achieved and that the protection of veteran trees on the margins of construction works would be reliant on bespoke assessments and measures that are currently undetermined. The ExA considers the Applicant's conclusions unduly positive, though it does recognise the small number of trees involved and the precautionary nature of the tree evaluations, such that the Applicant's finding of no significant effect remains valid [ER 3.5.168].

Mitigation through woodland creation

- 4.25. The ExA notes the potential construction effects on 4.26ha of woodland during construction, including losses or temporary impacts on approximately 2.57ha of HPI woodland. The ExA concurs with the Applicant's conclusion that this would represent a moderate and significant adverse effect [ER 3.5.169].
- 4.26. The ExA notes that the Applicant proposes to provide mitigation through woodland creation and considered the residual effect to be neutral and not significant. The ExA has considered the effect through the mitigation of woodland creation alongside matters in relation to the reduced buffers afforded to ancient woodlands and considers that the cumulative impact should be considered [ER3.5.171]. Furthermore, the ExA is mindful of the lack of detail in the relevant control documents in respect of the mitigation planting, fostering natural regeneration of woodland on fertile arable land, often at some distance from seed sources, and the approach to ensuring proper establishment of new woodland [ER 3.5.172].
- 4.27. The ExA notes that with the proposed mitigation through woodland creation, in place, the Applicant assesses the residual effect on woodland habitats (including HPI) to reduce from moderate and significant to neutral and not significant [ER 3.5.173]. However, the ExA does note that the impacts would be experienced at the outset of the Proposed Development, it would be some time before the mitigation measures were implemented, and it would potentially be several decades before they were fully restored to their former ecological effectiveness. As such, the ExA disagrees with the Applicant's conclusions about residual effects and concludes that there would be a temporary moderate and significant adverse effect on woodland habitats, including HPI, as a result of the Proposed Development [ER 3.5.174].

Aftercare

- 4.28. The ExA notes the divergent views of the parties in relation to what might constitute an appropriate aftercare period for the various habitat reinstatement, mitigation and enhancement schemes. Noting the concerns of the local authorities, it is content that the Applicant sufficiently clarified its proposals in the early stages of the Examination [ER 3.5.175] and also notes Natural England's general acceptance of the Applicant's proposals, and it is satisfied that the Applicant achieve an appropriate balance in terms of biodiversity and ecology considerations [ER 3.5.176]. The ExA is also content that the Applicant's mitigation proposals, including the trenchless crossing to the south of Ansell's Grove would avoid impacts on the Alphamstone Meadows Local Wildlife Site and associated rare and protected species [ER 3.5.177].

ExA's Overall Conclusion

- 4.29. Whilst the ExA agrees with the majority of the Applicant's assessment findings, it disagrees that there would be no significant residual effects. For the reasons set out above it concludes that there would be a temporary moderate and significant adverse effect on woodland habitats, which it considers affords moderate negative weight against the making of the Order.

The Secretary of State's Conclusion

- 4.30. The Secretary of State has reviewed the case on biodiversity and ecology and the supporting evidence summarised in the ExA's report and submitted by the Applicant. He has also considered the important and relevant policies set out in the 2011 NPSs and the recently designated 2024 NPSs. The Secretary of State agrees with the ExA's conclusions including the consideration of the management plans (including the LEMP) which is dealt with at paragraph 4.72 in this letter, and that through the application of the mitigation the Applicant has proposed, there would be a temporary moderate and significant adverse effect on woodland habitats. The Secretary of State therefore ascribes moderate negative weight against the making of the Order.

Good Design

- 4.31. The ExA is content that the Applicant has considered the use of natural resources, sustainability and that it has set out a commitment in relation to future design intentions in ES Appendix 4.1, Good Design [APP-090] but notes that neither this commitment nor any of the associated mitigation is secured through the dDCO [ER 3.6.40]. The ExA recognises that much of the design set out in the application is of a preliminary or indicative nature, and that the dDCO allows considerable flexibility in terms of location, detailed design and construction methods [ER 3.6.44]. The ExA accepts the need for flexibility prior to the detailed design being developed by contractors, and that this aligns with policy on fitness for purpose and functionality in NPS EN-1. The ExA acknowledges that the Applicant is governed by its own and regulator obligations, so - on balance - the ExA is content that there is no strict need for an additional DCO Requirement in this respect [ER 3.6.46] and also recognises that the Applicant would have very limited choice in the aesthetic appearance of the infrastructure [ER 3.6.45].
- 4.32. With regard to the route of the permanent access road to the Stour Valley east cable sealing end compound, the ExA notes that the Applicant added a commitment to use a landscape architect, *'to advise on suitable finishes... with the aim of reducing the landscape and visual effects of this feature.'* While recognising the other constraints on the design of the route, the ExA considers this to fall short of committing to good design and considers that the landscape architect should have been allocated a more fundamental design role.
- 4.33. The ExA concludes that the Applicant has not responded as fully as might have been appropriate to matters relating to good design, and that, overall, they carry a little weight against the making of the Order [ER 3.6.53].

The Secretary of State's Conclusion

- 4.34. The Secretary of State agrees with the ExA that the applicant has set out a commitment in relation to future design intentions, however, the Secretary of State also notes that the applicant has not responded as fully as might have been appropriate to the issues

surrounding good design, particularly with regard to the route of the permanent access road to the Stour Valley east cable sealing end compound. The Secretary of State, therefore, ascribes a little weight against the making of the Order.

Historic Environment

The ExA's conclusions

- 4.35. The ExA's conclusions are set out at ER 3.8.87 to 3.8.104. The ExA examined the impact of the Proposed Development on all heritage assets identified in the application and considered during the Examination. As required by Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010, the ExA had full regard to the desirability of preserving designated heritage assets, including listed buildings and their settings, and the character and appearance of Conservation Areas and Scheduled Monuments or their settings [ER 3.8.87].
- 4.36. The ExA does not identify any significant residual effects for the Conservation Areas. Similarly, when considering the small benefits of the removal of the 132kV line and the small disbenefits of constructing the proposed 400kV line, it finds no significant effects on any scheduled monuments, though it considers the small disbenefits at the Moat Farm scheduled monument to amount to less than substantial harm [ER 3.8.88].
- 4.37. The ExA notes and agrees with the concerns expressed by Historic England and others that, while the Applicant's assessment of the indicative scheme in the vicinity of Hintlesham Hall appears adequate, the flexibility allowed by the proposed limits of deviation had the potential for the final design to have a much greater effect on the setting of Hintlesham Hall and its associated buildings [ER 3.8.90].
- 4.38. The ExA concludes that the Applicant's secured solution, not to locate a pylon between the access track to Kennels Cottage and 100m to the south-west of the track (REAC EM-AB01), is proportionate and secures the ongoing involvement of Historic England in the detailed design process. It notes that the vertical limits of deviation would remain but is content that location rather than height was the important factor, and that a modest increase in pylon height through application of the maximum vertical limit of deviation would not materially influence the impact on the setting of the listed buildings [ER 3.8.91].
- 4.39. The ExA is also content that the Applicant's mitigation and enhancement proposals are proportionate [ER 3.8.92]. The ExA notes Historic England's conclusion that the impact on Hintlesham Hall amounted to less than substantial harm and finds no reason to disagree [ER 3.8.94].
- 4.40. The ExA is also content that sufficient information and assessment of the specific cultural association between the landscape of the Dedham Vale and Stour Valley, Benton End House, Overbury Hall and other heritage assets with noted artists was put before the Examination before its close [ER 3.8.95], concurring with the view of Suffolk County Council and Babergh and Mid Suffolk District Councils that the residual impact would be greater than small, that the effect would be significant, and that the impact on the setting of the assets would constitute less than substantial harm. No specific opportunity for mitigation of these effects was identified [ER 3.8.96].
- 4.41. The ExA notes the outstanding disagreement between the Applicant and the local authorities about the level and reporting of archaeological investigations and the Outline Written

Scheme of Investigation. Whilst it seems unfortunate that some of the archaeological investigations were not completed in time to be reported into the Examination [ER 3.8.97], it is content that the Outline Written Scheme of Investigation was improved during the Examination, and that its conversion to a Detailed Written Scheme of Investigation would afford the local authorities an opportunity to request further changes to ensure alignment with their preferred terminology and processes, and to make a detailed consideration of all the archaeological investigations and raise issues if necessary [ER 3.8.98].

- 4.42. The ExA concludes this topic by noting that the Outline Written Scheme of Investigation includes sufficient information and controls to ensure that the Detailed Written Scheme of Investigation would provide adequate mitigation of the potential effects, including the excavation and recording of any unavoidably affected assets. With this, the ExA concludes that no significant impacts on known archaeological assets are likely, and that it is unlikely that any unknown assets of similar or greater significance would be more seriously affected [ER 3.8.100].
- 4.43. The ExA view is that the Proposed Development would have moderate significant adverse effects on listed buildings, specifically the setting of Hintlesham Hall and its associated features, and on the settings of the notable artist associated with Benton End House and Overbury Hall in the Dedham Vale and Stour Valley. However, the ExA considers these to represent less than substantial harm to the significance of the assets, which requires convincing justification when it comes to weighing the public benefits of the Proposed Development in the planning balance [ER 3.8.101], and other impacts on historic and archaeological designated assets would individually be no worse than small and would not be significant, but they are cumulatively considered to add to the less than substantial harm [ER 3.8.102]. Overall, the ExA ascribes moderate negative weight against the making of the Order [ER 3.8.104].

The Secretary of State's Conclusion

- 4.44. The Secretary of State has reviewed the case on historic environment and the supporting evidence summarised in the ExA's Report and submitted by the Applicant. He has also considered the policies set out in the 2011 NPSs and the recently designated 2024 NPSs. In particular, the Secretary of State notes that when considering the impact of the Proposed Development on the significance of a designated heritage asset the 2024 EN-1 at paragraph 5.9.27 states that great weight should be given to the asset's conservation. Paragraph 5.9.28 goes on to state that the Secretary of State should give considerable importance and weight to the desirability of preserving all heritage assets and the Secretary of State does so in this case in relation to each of the heritage impacts identified. The Secretary of State notes further that NPS EN-1 states that the greater the harm, the greater the justification will be needed for any loss. The Secretary of State agrees with the ExA's conclusions and concludes that the Proposed Development would have moderate significant adverse effects on listed buildings, specifically the setting of Hintlesham Hall, and on the settings of the notable artist associated Benton End House and Overbury Hall in the Dedham Vale and Stour Valley, and also agrees that there have not been any identified significant residual effects for Conservation areas or scheduled monuments [ER 5.2.27]. The 2024 NPS EN-1 paragraph 5.9.32 states that where the proposed development will lead to less than substantial harm to the significance of designated heritage assets, that harm should be weighed against the public benefits of the proposal. The Secretary of State concludes that the harms are outweighed by the substantial public benefit of the Application. The Secretary of State therefore ascribes moderate negative weight against making the Order.

Landscape and Visual

The ExA's Conclusions

- 4.45. The ExA is content that matters relating to effects on the Dedham Vale AONB and Stour Valley SLA and their settings were properly considered and assessed and recognises some longer-term benefits from the Proposed Development as well as the short-term significant adverse impacts resulting from construction activities and the time lag between completion and the recovery and maturation of replacement and mitigation planting. The Applicant took due account of the special qualities of the AONB and had regard to its statutory duties under the Countryside and Rights of Way Act. The ExA considers its approach to be broadly compliant with the new duty under the Levelling-up and Regeneration Act [ER 3.9.200].
- 4.46. The ExA concludes that, on balance, impacts on the landscape and views carry a little weight against the making of the Order [ER 3.9.204].

Secretary of State's Conclusions

- 4.47. The Secretary of State has considered the impact on the Dedham Vale AONB. The Secretary of State also notes the duty under s245 of the Levelling-up and Regeneration Act 2023 for public bodies to further the purposes of AONBs and also notes the 2024 NPS EN-1 in this regard. The Secretary of State is satisfied that all possible steps have been taken to further the relevant purposes of the AONB and comply with the statutory duty in this particular case.
- 4.48. The Secretary of State agrees with the ExA's conclusions and weighting on the issue of landscape and views and ascribes little weight against the making of the order.

Land use, soil and geology

The ExA's conclusions

- 4.49. The ExA notes that the Applicant's approach of assuming that all grade 3 land is BMV provides a reasonable worst-case scenario for the purpose of the EIA. The Applicant confirmed site surveys would be undertaken prior to construction where appropriate and was confident the assessment [APP-079] would not change as a result. The CEMP [REP9-033] also confirms that pre-construction soil surveys would be undertaken where stripping is proposed for underground cabling where there is no existing data. Taking all of these matters into account, the ExA is satisfied that the baseline characterisation of BMV is adequate [ER 3.10.72]. Furthermore, the ExA notes that it is satisfied that, in respect of paragraphs 5.10.8 and 5.10.15 of NPS EN-1, the Applicant has sought to minimise impacts on, and justified the reasons for including parts of the Proposed Development on BMV land [ER 3.7.73].
- 4.50. The ExA notes that the local planning authorities objected to the making of the Order ([REP9-072] and [REP10-018]), partially on the grounds of the status of the control document management plans, as they judged that the management plans should be considered outline, and that final versions of each that would require their approval should be submitted by the Applicant post-consent. The Applicant held a different position on this matter. The reasoning is summarised in the Statement of Common Ground between the Applicant and the local authorities [REP10-006] [ER 3.10.74].

- 4.51. The ExA considers the CEMP, MWMP and CoCP to be high level management plans that include some rather generic approaches to mitigation. For example, good practice measure AS01 in the REAC [REP9-037], an Appendix to the CEMP [REP9-033], includes indicative soil storage locations, and notes that soil stockpiles would be designed taking into consideration site conditions and the nature and composition of the soil. Paragraph 11.3.8 of the CEMP [REP9-033] says that as part of detailed site planning (and in advance of any soil stripping activities) the contractor would identify suitable locations for soil storage and soil storage methods based on the soil type and land grade. The Applicant [REP1-034] confirmed that prior to undertaking works, the main works contractor would develop the sequence of excavation, stockpiling, duct installation and backfill for the six trenches in each linear section [ER 3.10.75].
- 4.52. The MWMP refers to protecting soils during construction and allowing the application of the correct processes for storage and reuse to maintain their classification as non-waste material through CL:AIRE 2011 [ER 3.10.76]. The MWMP (paragraph 6.4.2) refers to waste being considered during the detailed design stage, and that the contractor would use the detailed design drawings to inform the procurement strategy. Section 6.5 gives typical examples of waste products [ER 3.10.77]. Given the high-level nature of some of these controls, as information about soils, materials and waste becomes more clearly defined during the detailed design and construction phase, the ExA considers that it would be appropriate for it to be shared with the relevant planning authority [ER 3.10.78].
- 4.53. The ExA therefore considers that detailed written plans for the management of materials and waste that are in accordance with the CEMP, MWMP and CoCP should be produced by the Undertaker and submitted to the relevant planning authorities. The ExA recommends this is secured through Requirement 4(4) of the DCO [ER 3.10.79].
- 4.54. However, the ExA does note that a detailed written plan for the management of waste would better satisfy paragraph 5.14.6 of NPS EN-1, which requires an applicant to provide details of any arrangements that are proposed for managing any waste produced and to prepare a Site Waste Management Plan. A detailed written plan for the management of material would also align with CL:AIRE 2011 and reflect paragraph 180(a) of the NPPF that planning decisions should protect and enhance soils [ER 3.10.80].
- 4.55. Overall, the ExA notes that it is satisfied that a Soil Management Plan (SMP) would help to minimise impacts on soil quality and is satisfied that it can be secured through the CEMP and Requirement 14 of the DCO [ER 3.10.81].
- 4.56. The ExA understands discussion with affected landowners on Heads of Terms are progressing [REP10-012]. The ExA agrees with the Applicant that, where effects on income cannot be mitigated, the compensation code provides the appropriate vehicle for any recompense for landowners [ER 3.10.82].
- 4.57. In conclusion, the ExA is satisfied that the Proposed Development would accord with the policy requirements of the extant NPS EN-1 and NPS EN-5, and that consideration of the 2024 energy NPSs would not alter this conclusion [ER 3.10.83]. The ExA recognises that there would be a permanent loss of 11.6ha of BMV land. Taking into account the mitigation secured through the DCO, the ExA concludes that land use, soil, and geology effects carry moderate negative weight against the Order being made [ER 3.10.84].

The Secretary of State's Conclusions

- 4.58. The Secretary of State has reviewed the case on land use, soil and geology, the supporting evidence and the representations summarised in the ExA's Report and submitted by the Applicant. He has also considered the important and relevant policies set out in the 2011 NPSs and the recently designated 2024 NPSs that have due regard to land use, soil and geology, as well as the local policies and LIRs. The Secretary of State agrees with the ExA that the 2024 NPSs would not alter this conclusion.
- 4.59. With regard to management plans, the Secretary of State has amended Requirement 4 of the DCO in accordance with the without-prejudice wording provided by the Applicant in [REP7-025], which he considers to be more appropriate than the ExA's recommended changes to Requirement 4(4). Paragraph 7.5 deals with the Secretary of State's overall conclusions regarding management plans.
- 4.60. The Secretary of State agrees with the ExA's conclusions and concludes that the Proposed Development would be a permanent loss of 11.6ha of BMV land but notes that this amounts to 2% within the Order Limits and is satisfied with the mitigation secured through the DCO. The Secretary of State therefore ascribes moderate negative weight against the Order.

5 Habitat Regulations Assessment

- 5.1. The Secretary of State's Habitat Regulations Assessment (HRA) is published alongside this letter. The paragraphs below should be read in conjunction with the HRA which sets out in full the Secretary of State's consideration of these matters.
- 5.2. The Conservation of Habitats and Species Regulations 2017 (as amended) ("the Habitats Regulations") aim to ensure the long-term conservation of certain species and habitats by protecting them from possible adverse effects of plans and projects. The Habitats Regulations provide for the designation of sites for the protection of habitats and species of international importance. These sites are called Special Areas of Conservation ("SACs"). They also provide for the classification of sites for the protection of rare and vulnerable birds and for regularly occurring migratory species within the UK and internationally. These sites are called Special Protection Areas ("SPAs"). SACs and SPAs together form part of the UK's National Site Network ("NSN").
- 5.3. The Convention on Wetlands of International Importance 1972 ("the Ramsar Convention") provides for the listing of wetlands of international importance. These sites are called Ramsar sites. Government policy is to afford Ramsar sites in the UK the same protection as sites within the NSN (collectively with SACs and SPAs referred to in this decision letter as "protected sites").
- 5.4. Regulation 63 of the Habitats Regulations provides that: *"....before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which (a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in-combination with other plans or projects), and (b) is not directly connected with or necessary to the management of that site, [the competent authority] must make an appropriate assessment of the implications for that site in view of that site's conservation objectives."*

And that: *"In the light of the conclusions of the assessment, and subject to regulation 64 (considerations of overriding public interest), the competent authority may agree to the plan*

or project only after having ascertained that it will not adversely affect the integrity of the European site or the European offshore marine site (as the case may be)."

- 5.5. The Proposed Development is not directly connected with, or necessary to the management of a protected site. Therefore, under regulation 63 of the Habitats Regulations, the Secretary of State is required (as Competent Authority) to consider whether the Proposed Development would be likely, either alone or in combination with other plans and projects, to have a significant effect on any protected site. If likely significant effects ("LSE") cannot be ruled out, the Secretary of State must undertake an Appropriate Assessment ("AA") addressing the implications for the protected site in view of its Conservation Objectives.
- 5.6. Where an adverse effect on the integrity ("AEoI") of the site cannot be ruled out beyond all reasonable scientific doubt, regulations 64 and 68 of the Habitats Regulations provide for the possibility of a derogation which allows such plans or projects to be approved provided three tests are met:
- there are no feasible alternative solutions to the plan or project which are less damaging to protected sites;
 - there are imperative reasons of overriding public interest ("IROPI") for the plan or project to proceed; and
 - compensatory measures are secured to ensure that the overall coherence of the NSN is maintained.
- 5.7. The Secretary of State may grant development consent only if it has been ascertained that the Proposed Development will not, either on its own or in-combination with other plans or projects, adversely affect the integrity of protected sites unless he chooses to continue to consider the derogation tests as above. The complete process of assessment is commonly referred to as a HRA.
- 5.8. The ExA considered that there was sufficient information before the Secretary of State to enable him to undertake an AA in order to fulfil his duties under the requirements of the Habitats Regulations.
- 5.9. The Secretary of State has carefully considered the information presented during the Examination, including the Report on the Implications for European Sites ("RIES"), the ES, representations made by IPs, and the ExA's Report. He considers that the Proposed Development has the potential to have an LSE from changes to key indicators of conservation value (surface water and groundwater quality) on the following two protected sites, when considered alone and in-combination with other plans or projects:
- Stour and Orwell Estuaries SPA; and
 - Stour and Orwell Estuaries Ramsar Site.
- 5.10. The Secretary of State has undertaken an AA in respect of the Conservation Objectives of the sites to determine whether the Proposed Development, either alone or in-combination with other plans or projects, will result in an AEoI of the identified protected sites. The Secretary of State has considered all information available to him including the recommendations of the ExA, the advice of Natural England ("NE") as the Statutory Nature Conservation Body ("SNCB"), the views of all other IPs, and the Applicant's case.

Appropriate Assessment conclusion

- 5.11. Based on the available information to him, and subject to the construction best practice and pollution mitigation measures as secured in the final Order, the Secretary of State is satisfied that the Proposed Development, either alone or in-combination with other plans or projects, will not adversely affect the qualifying features of the Stour and Orwell Estuaries SPA and Ramsar Site.

The Secretary of State's Conclusion on the HRA

- 5.12. Having considered the information available to him and having made a full assessment of the potential for an AEoI of each of the protected sites for which the potential for LSE was identified, taking into account the views of the Applicant, the ExA, the SNCB and all IPs, the Secretary of State concludes that an AEoI can be excluded beyond reasonable scientific doubt, subject to the measures secured through the final Order. As such, the Secretary of State is satisfied that there is no significant risk to any protected site and their qualifying features as a result of the Proposed Development and considers that no further tests set out in the Habitats Regulations are required.

6. Compulsory Acquisition

- 6.1. The Secretary of State notes that to support the delivery of the Proposed Development, the Applicant is seeking powers of Compulsory Acquisition (CA) and Temporary Possession (TP) of land and rights which it had not been able to acquire by voluntary agreement. The Applicant is seeking these powers to:
- acquire land permanently within the Order limits;
 - take temporary possession of land within the Order limits;
 - acquire rights over some land within the Order limits;
 - extinguish rights over some of the land within the Order limits; and
 - temporarily suspend rights over some of the land within the Order limits in order to construct, operate and maintain the Proposed Development [ER 6.3.1].
- 6.2. The ExA concluded that development consent should be granted and consequently that the compelling case in the public interest due to the urgent need for this project, for the CA powers sought and that the Proposed Development would comply with s122(2) and s122(3) of the PA2008 [ER 6.6.6; ER 6.7.281] and with CA Guidance, the Human Rights Act 1998 (HRA1988) and the Equality Act 2010 [ER 6.6.1].
- 6.3. The ExA notes that all land within the Order Limits is considered to be necessary for the Proposed Development. However, under dDCO Article 23, should it transpire that any is not required, for instance as a result of the detailed design process, the Applicant could only seek to compulsorily acquire that part of the land required. In its Statement of Reasons [REP9-011], the Applicant explained that it is not seeking to compulsorily acquire the full extent of land that falls within the Order Limits. It is seeking temporary powers over an area greater than that proposed for permanent acquisition or acquisition of rights, which is identified through the Class of Rights shown on the Land Plans [REP9-004]. Once the Proposed Development was constructed, the Applicant would only require permanent rights to operate, access and maintain the development over a corridor within the limits of deviation if it had been unable to secure the permanent land or rights acquisition required via a voluntary agreement [ER 6.3.3].

The CA and TP powers sought

- 6.4. The ExA notes that the powers being sought by the Applicant relate to the CA of land and rights over land together with the TP of land. The Book of Reference sets out in detail seven classes under which land or rights may be acquired permanently or land possessed temporarily [REP9-016]. These are identified by the colour of the plot on the Land Plans [REP9-004] and by the wording used in the Book of Reference plot description [ER 6.5.1].
- 6.5. S132 of the PA2008 applies to the CA of rights over common land, open space or fuel or field garden allotments. Such land is defined as ‘special category land’ under Regulation 2 of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009. In such cases, the PA2008 indicates that an Order granting development consent would be subject to special parliamentary procedure unless the Secretary of State is satisfied that one of the relevant subsections applies and that fact is recorded in the Order. Subsection 132(3) applies if the Order land, when burdened with the Order right, would be no less advantageous to the persons in whom it is vested, other persons entitled to rights of common or other rights, and the public [ER 6.5.7]. The Book of Reference described the types of open space [REP9-016] in Part 5. The relevant plots of land were included in the Book of Reference and on the Special Category Land Plans [APP-009] [ER 6.5.8].
- 6.6. If a Statutory Undertaker makes a representation about the CA of land or a right over land that has been acquired for the purpose of its undertaking, and this is not withdrawn, s127 of the PA2008 applies. In these circumstances, the DCO can only include a provision authorising the CA of that land or right if the Secretary of State is satisfied that the land or right can be purchased without serious detriment to the carrying on of the undertaking, or that any such detriment can be made good by use of or replacement with alternative land [ER 6.5.9]. Amongst other things, the dDCO (Article 43) [REP9-006] includes provision to authorise the CA of land belonging to Statutory Undertakers and existing rights therein [ER 6.5.10].
- 6.7. S138(4) provides that an Order may include provision for the extinguishment of the relevant right or the removal of relevant apparatus of Statutory Undertakers only if the Secretary of State is satisfied that the extinguishment or removal is necessary for the purpose of carrying out the development to which the Order relates. The dDCO (Article 43) [REP9-006] includes such a provision [ER 6.5.12].
- 6.8. In examining the application, the ExA considered all written material in respect of CA and TP and asked questions regarding justification of the need for the CA and TP in its first written questions (ExQ1) [PD-005] and further written questions (ExQ2) [PD-008] [ER 6.6.2]. In addition, the issues were explored in further detail at two Compulsory Acquisition Hearings (CAHs). CAH1 ([EV-028] and [EV-030]) and CAH2 [EV046]. No APs (“Affected Persons”) chose to participate in CAH2 [ER 6.6.3].

Compulsory Acquisition

- 6.9. The CA Guidance says that the Applicant should be able to demonstrate to the satisfaction of the Secretary of State that all reasonable alternatives to CA, including modifications to the scheme, have been explored. The Applicant’s approach to the consideration of alternatives in relation to CA was set out in section 7.4 of the Statement of Reasons [REP9-011] [ER 6.6.8]. The alternatives in terms of the route, siting of component parts and construction were considered throughout that process, including in response to feedback received during the 2021 and 2022 consultations [APP-043] [ER 6.6.10]. In order to construct, operate and maintain the project, land and rights in the ownership of parties other than the Applicant would need to be acquired. Any practicable alternative location for the project would similarly

require the acquisition or use of third-party land. This meant that acquisition or use of third-party land could not be avoided. Where appropriate, the Applicant has also sought TP powers rather than the CA of land or rights, as this is more proportionate where the permanent acquisition of land or rights is not required [ER 6.6.12].

- 6.10. The Applicant is seeking to acquire the necessary rights by agreement but has not yet been able to do so in relation to all of them. Whilst it expects to continue to negotiate to acquire the rights by voluntary agreement, the Applicant requires the powers of CA and TP that it is seeking in order to provide certainty that it will have all the rights required to construct and operate the Proposed Development in order to realise its significant public benefits.
- 6.11. In light of the above, the ExA considers that the Applicant has satisfactorily demonstrated that all reasonable alternatives to CA have been explored [ER 6.6.15].

Temporary Possession

- 6.12. In relation to the TP powers sought pursuant to Articles 26 to 28 of the dDCO, the Applicant said that the powers sought are required to carry out and thereafter maintain the Proposed Development. They would be needed for a limited time during construction and for occasional maintenance in the operational phase [ER 6.6.16].
- 6.13. The request for TP powers must be justified by an applicant, and there must be adequate compensation provisions in place for those whose land is affected [ER 6.6.17]. In considering objections to TP rights sought by the Applicant, the ExA has approached them mindful of the legal tests for CA, given that they would also interfere with established rights in land [ER 6.6.18].

Land for Biodiversity Net Gain

- 6.14. The ExA notes that the Order land encompasses land for BNG. As part of National Grid's Our 2021-2026 Environmental Action Plan 2021–2026 (April 2021), the Applicant committed that by 2026 it will deliver at least 10% or greater environmental value (including biodiversity) on all construction projects. The Government intends to commence mandatory BNG on Nationally Significant Infrastructure Projects (NSIPs) accepted for examination from November 2025. 30 years will be set as the minimum period for which biodiversity gain must be secured [ER 6.6.19]. Whilst the Applicant is seeking voluntary agreements with parties, if these cannot be agreed, it has identified areas for suitable BNG within the Order Limits, and the best chance of providing BNG successfully on-site or close to the proposed development, is to seek CA powers [ER 36.6.20].
- 6.15. The 2024 NPS EN-5 considers BNG in the context of electricity networks infrastructure at sections 2.5 Environmental and Biodiversity Net Gain and 2.6 Land Rights and Land Interests. Whilst paragraphs 4.1.8 and 4.1.9 of the 2024 NPS EN-1 refer to land rights in the context of mitigation and landscape enhancement, paragraph 2.6.6 of the 2024 NPS EN-5 includes BNG as one of the purposes for which an applicant may seek the CA of land or rights over that land. Any such application is to be considered under the provisions of the PA2008 and any associated guidance. In this context, the ExA concludes that the Applicant's proposed use of CA and TP powers for the provision and maintenance of the BNG elements of the Proposed Development is consistent with policy and guidance and there is no reasonable alternative to it [ER 6.6.22].

Funding

- 6.16. The Applicant's Funding Statement [APP-037] explained how the Proposed Development would be funded and how the acquisition of land necessary to build it would be financed. It

said that the Applicant would have the ability to procure the financial resources required for the Proposed Development, including the cost of acquiring any rights and the payment of any compensation or blight claims brought by those interested in the land affected by the DCO [ER 6.6.23].

- 6.17. Based on the submitted evidence, the ExA states that it is satisfied that the necessary funds would be available to the Applicant to cover the likely costs of CA and TP [ER 6.6.26].

Consideration of Individual Objections

- 6.18. Twenty-five representations were made by APs or their representatives that specifically related to concerns regarding the CA or TP of their land, and the impact on the use of the land. The Applicant entered into dialogue with all landowners, though one of the negotiations was unilaterally closed [ER 6.7.5].
- 6.19. The Compulsory Acquisition and Temporary Possession Objections Schedule [REP9-056] and Statement of Reasons Appendix B, Schedule of Negotiations with Land Interests [REP9-015], set out the status of objections and outstanding issues with each AP at the end of the Examination [ER 6.7.7]. The issues raised by APs included insufficient consultation; the impact of construction activities; concerns around the re-instatement of land; the necessity of temporary access routes; the re-location of pylons, overhead lines and other structures; and the impact on AP's agricultural businesses. Mr P Nott and Mr G Nott raised concerns around the proposed temporary access route from the A131, which was not included in the initial non-statutory and statutory consultations. Their issues are discussed in more detail below.

Mr P Nott

- 6.20. Mr P Nott is an AP with an interest in land (Book of Reference Parts 1 and 2) sought for rights in accordance with Class 2, 3, 4 and 6 [REP9-016] [ER 6.7.186] and his objection related to 2 plots of land between the A131 Sudbury Road and Oak Road in which the Applicant sought Class 4 – CA of rights of access.
- 6.21. The AP asked the ExA to consider whether the rights sought by the Applicant needed to be permanent rather than just for construction. Whilst he accepted that works may be required in the future to the Proposed Development, he considered the imposition of a permanent limit on activities across a significant swathe of his holding to be disproportionate [ER 6.7.191].
- 6.22. The Applicant confirmed [REP4-023] that its initial non-statutory and statutory consultations had not included the proposed temporary access route from the A131 but that it had been developed partially in response to feedback from local residents about the unsuitability of the local road network for large vehicles. The subsequent targeted consultation included it. Details were set out in the Applicant's Consultation Report, Appendix K, September 2022, Targeted Consultation Materials and Supporting Information [AS-009] [ER 6.7.198].
- 6.23. The ExA notes that the Applicant explained ([REP1-025], pages 28 to 30) why it considered the road network unsuitable for the abnormal indivisible loads that would deliver components to the proposed Stour Valley west cable sealing end compound. It considered the hybrid option at the request of landowners (which would use a mixture of the local road network and temporary access across private land) and concluded that the proposed temporary access route was its preferred option [ER 6.7.200].

- 6.24. The Applicant [REP1-025] clarified that the application intended the proposed temporary access route to be in place for the duration of construction activities, after which it would be removed and the land reinstated. It did not intend to use the temporary access route for routine maintenance. However, the Applicant sought permanent rights so that it could gain access to the Stour Valley west cable sealing end compound in the unlikely event that major works were required in the future [ER 6.7.209].
- 6.25. The Applicant advised that a situation requiring the reinstallation of the temporary access route from the A131 would be unlikely, but it may be necessitated by repair or maintenance works that were of such magnitude that they were akin to the construction works themselves. When, and to what extent, the temporary access route from the A131 might need to be reinstalled would depend on the circumstances of any particular asset failure or disrepair, as well as the technologies available to the Applicant and the size and number of the construction vehicles required. It said that its preferred approach would be to make use of the local road network where practicable, but this would depend on the scale of the works [REP4-023]. If the temporary access route had to be reinstalled, the land would again be reinstated after works had been completed [REP1-025] [ER 6.7.210].
- 6.26. The Applicant understood that seeking CA of rights of access could lead to a degree of uncertainty for APs but considered it to be necessary and proportionate given the importance of ensuring the integrity of the electricity transmission system. It added that APs would be compensated for any proven loss [ER 6.7.213].
- 6.27. The dDCO [REP9-006] does not include a specific requirement to remove the temporary access route once construction is complete [ER 6.7.216]. However, the Applicant pointed out that it would risk its actions being deemed ultra vires and unlawful if it physically retained the temporary access route post-construction, as the dDCO only permitted it for the purposes of constructing and maintaining the authorised development. Measure GG07 in the CoCP [REP9-035] required land used temporarily to be re-instated where practicable to its pre-construction condition and use. The CoCP would be secured through Requirement 4(2)(a) of the DCO [REP9-006] [ER 6.7.217].
- 6.28. Should the rights be obtained using the CA powers, any claim for compensation would be time-barred after six years following the acquisition of the permanent rights. However, the Applicant confirmed that the initial compensation payable for the acquisition would account for the permanent rights sought and the potential for re-installation [ER 6.7.218].
- 6.29. The AP was consulted on the current version of the temporary access route before it was submitted as part of this application for development consent. The Applicant has not been deficient in the adequacy of its consultation [ER 6.7.232].
- 6.30. The ExA recognises that the possible reinstatement of the temporary access route at some point in the future represents unwelcome uncertainty for Mr Nott. However, the ExA does not consider that his alternatives can be justified on CA grounds [ER 6.7.237].
- 6.31. Considered in the round, the ExA is satisfied that the temporary access route is required to facilitate the development to which the development consent relates and is content that there are suitable provisions for compensation in the dDCO [ER 6.7.238]. If agreement is not reached through negotiation, the ExA is satisfied that the CA of the relevant interests in this AP's land would be necessary to implement the Proposed Development and that it would be reasonable and proportionate to do so. Should the Secretary of State decide to grant the Order for the Proposed Development, the ExA considers that the Applicant's approach in

relation to the CA powers sought in respect of this land are consistent with s122 and s123 of the PA2008 [ER 6.7.239].

Mr G Nott

- 6.32. Mr G Nott is an AP (Book of Reference Parts 1 and 2) with interest in land proposed for Class 4 – CA of rights of access. His plots lie in the vicinity of Lorkin's Lane, Bishop's Lane, Twinstead Road and Oak Road and submitted his XRR [RR-080] and WR [REP2-056] on behalf of D P Nott & Sons [ER 6.7.240]. Mr Nott's land would be affected by the proposed temporary access route leading from the A131 Sudbury Road to the Stour Vally west cable sealing end compound [ER 6.7.241].
- 6.33. The AP said that he was supportive of the Proposed Development in principle but wanted more information.
- 6.34. Following CAH1 [REP4-023], at which Mr Nott's agent was present, the Applicant confirmed that its initial non-statutory and statutory consultations did not include the proposed temporary access route from the A131.
- 6.35. The Applicant acknowledged [REP3-048] that, at a meeting with Mr Nott in September 2022, prior to the targeted consultation exercise, it had suggested it might be possible to use the highway network for the route to the Stour Valley west cable sealing end compound [ER 6.7.246]. The Applicant said [REP3-048] that it had sought to engage with Mr Nott and his agents and had many meetings and discussions in person, by email and telephone to explain details of the Proposed Development and listen to the concerns. After issue of the HoTs in March 2023, it had meetings with his agents to discuss amendments, the AP's concerns and his alternative routing proposals.
- 6.36. The ExA is satisfied that Mr Nott was kept apprised of the Proposed Development as it would affect his land and sees no deficiency in the Applicant's consultation process prior to submission of this Application. Thereafter, there has been ongoing engagement with the AP and his agent and, if there was uncertainty as to what he was being asked to sign up to, there was opportunity through the Examination to seek clarification on the nature of the Proposed Development and the rights sought in Mr Nott's land [ER 6.7.250].
- 6.37. The ExA considers the Applicant's explanation of the change of plans in achieving access to the Stour Valley west cable sealing end compound to be logical, rational and based on proper consideration of alternatives. Having considered the Applicant's Consultation Report [APP-043] and supporting Appendices, particularly Appendix K [AS-009] and Appendix L [APP-055], the ExA does not find short-comings in the Applicant's consultation with the AP [ER 6.7.255].
- 6.38. Overall, The ExA notes that it is satisfied that the plans and documents, including the DCO, that would define the extent of any forthcoming consent, are publicly available in the Examination Library so that APs and their agents could establish the implications for their land rights. This includes the variation in the width of the Order Limits along the proposed temporary access route when the Procedural Deadline A Submission 6.4 Environmental Statement Figures, Rev B [PDA-002] is considered together with the Land Plans [REP9-004], Book of Reference [REP9-016] and dDCO [REP9-006]. The Applicant's response to the tailored question ([PD-005], CA1.4.19) provided helpful clarification [ER 6.7.260].
- 6.39. Having considered the AP's preferred Option 3c, the Applicant's evidence about why Option 2a remains the preferred route for the proposed temporary access route was extensive and comprehensive ([REP3-053], [REP4-009], [REP5-026] and [REP6-037]). It illustrated that the AP's concerns about impact on his land were fully taken account of, albeit that such

consideration did not result in the incorporation of his proposed changes to the alignment of the temporary access route [ER 6.7.256].

- 6.40. The ExA considers that the Applicant provided a persuasive explanation of why CA of rights in the land is sought as opposed to TP. Its approach is consistent with paragraph 2.6.4 of 2024 NPS EN-5, which says that where CA of rights is sought, permanent arrangements are strongly preferred over voluntary wayleaves in view of their greater reliability and economic efficiency and reflecting the importance of the relevant infrastructure to the nation's Net Zero goals. Given the possible need for future access, the policy concern is an equally applicable important and relevant consideration in respect of reliance on powers of TP of land [ER 6.7.262].
- 6.41. The ExA's view is that the Applicant's reference to the temporary access route as temporary, despite it seeking CA of rights, is correct given that it would be removed at the end of the construction phase and reinstated if necessary. The confusion it caused was addressed at several junctures throughout the Examination when the nature of rights sought in the temporary access route was clarified together with when it would be removed, might be re-installed and the associated notice periods and compensation provisions. The ExA understands that seeking CA of rights of access would lead to a degree of uncertainty for individual APs. However, it is necessary and proportionate given the importance of ensuring the integrity of the electricity transmission system [ER 6.7.263].
- 6.42. From discussion with the Applicant's representatives in July 2023, the AP understood that the final design for the proposed temporary access route would be left for the appointed contractor to design and implement, but that it is likely that the soil would be stripped to a depth of 300 to 350mm. Given that the preliminary designs and provision in the plans attached to the application are for solely a single stack of soil, the AP asked the ExA to consider whether the Applicant had provided sufficient storage provision to the suitable separation of the top and sub soils [ER 6.7.270].
- 6.43. The ExA also notes that the Applicant's evidence given in paragraphs 6.7.220 and 6.7.221 on soil handling, storage, management and reinstatement are equally applicable to Mr G Nott's concerns and those of Mr P Nott [ER 6.7.271]. The ExA considers that requiring the undertaker, through provision in the dDCO, to negotiate with individual APs on associated matters of detail during the construction phase would be inappropriate and disproportionate given the scale of the project and proven need for it [ER6.7.271].
- 6.44. Measure AS03 in the CoCP [REP9-035], secured by Requirement 4(2)(a) of the dDCO [REP9-006], would provide for access to and from residential and agricultural land uses throughout the construction period or as agreed through the landowner discussions [ER 6.7.274]. The ExA is satisfied that the above measure addresses the AP's concerns [ER 6.7.275].
- 6.45. The ExA is satisfied that the CA and TP powers sought over the land identified in the Land Plans [REP9-004] and Book of Reference [REP9-006] are required for the Proposed Development, to facilitate it or are incidental to it. Moreover, there is a compelling case in the public interest for the land to be acquired compulsorily. Accordingly, the rights sought meet the conditions set out in s122(2)(a) and s122(2) (b) of the PA2008 in this case [ER 6.7.281].

The ExA's Conclusions

- 6.46. The CA and TP powers sought might result in some adverse impacts on the private interests of the owners of the land affected. However, account has been taken of the following considerations:

- the development for which the land is sought would be in accordance with national policy as set out in NPS EN-1, and NPS EN-5 and development consent should be granted;
- there is a need to secure the land and rights required to deliver the Proposed Development and to construct it within a reasonable timeframe;
- the Proposed Development represents a significant public benefit;
- the private loss to those affected has been mitigated through the selection of the land and minimisation of the extent of rights and interests proposed to be acquired;
- the private losses suffered are not such as to outweigh the public benefits that would accrue from the grant of the CA and TP powers which are sought;
- the Applicant has, to the extent possible, explored all reasonable alternatives to the CA of the rights and interests sought. For a project of this nature it is reasonable that the Applicant should retain CA and TP powers in a made Order, as a guarantee against the possible failure of voluntary agreements;
- funding is available to meet any compensation liabilities for CA and TP and the dDCO makes provision to ensure this; and
- CA and TP for the Proposed Development can be delivered in a manner that accords with relevant human rights considerations [ER 6.7.282].

6.47. On that basis, the ExA is satisfied that there is a compelling case in the public interest for the land to be acquired compulsorily, satisfying the requirement of s122(3) of the PA2008. The ExA cannot see anything in individual objections that would prevent the grant of the CA or TP powers sought and considers them necessary and proportionate should the Secretary of State decide to grant the Order for the Proposed Development [ER 6.7.283].

The Secretary of State's Conclusion

6.48. The Secretary of State agrees with the ExA that there is a compelling case in the public interest for the land to be acquired compulsorily, satisfying the requirement of s122(3) of the PA2008, and considers the powers sought to be necessary and proportionate. The Secretary of State is content that all reasonable alternatives to the CA of the rights and interests sought have been explored and agrees that a requirement for the undertaker, through provision in the dDCO, to negotiate with individual APs on associated matters of detail during the construction phase is inappropriate and disproportionate.

Statutory Undertaker Land, Rights and Apparatus

6.49. The ExA notes that the land affected by the Proposed Development would include land, rights or other interests owned by several Statutory Undertakers. The Statement of Reasons reported on the Applicant's negotiations with each of these Statutory Undertakers ([REP9-011], section 8.3). Representations made by the following Statutory Undertakers were subsequently withdrawn:

- Cadent Gas Limited [RR-024]; and
- Pivoted Power LLP ([RR-035] and [REP2-029]) [ER 6.8.1].

- 6.50. The report goes on to note that the Applicant made applications under s127 of the PA2008 in respect of the following Statutory Undertakers where representations were made and not withdrawn before the close of the Examination:
- Network Rail Infrastructure Limited [REP8-037];
 - East Anglian THREE Limited [REP9-068];
 - Anglian Water Services Limited [REP9-069] [ER 6.8.2].
- 6.51. Anglian Water Services Limited withdrew their representations following the examination in a letter dated 20 March 2024. East Anglia THREE Limited subsequently withdrew their representations in a letter dated 17 July 2024.
- 6.52. The Applicant also made an application under s138 of PA2008, Statutory Undertakers Telecommunications Operators' Rights and Apparatus [REP9-066]. The associated Schedule identified the Statutory Undertakers and Electronic Communications Code Operators whose rights and apparatus might be affected by the Proposed Development [ER 6.8.3].

Network Rail Infrastructure Limited

- 6.53. The Applicant sought CA of rights over land in which Network Rail Infrastructure Limited has a legal interest (Book of Reference Parts 1 and 3). The rights fell within Class 3 (Compulsory Acquisition of rights – underground cable) and Class 4 (Compulsory Acquisition of rights - access) as shown in the Book of Reference [REP9-016] and the accompanying Land Plans [REP9-004] [ER 6.8.4]. Table 1.1 of the s127 application [REP8-037], Proposed Works and Locations, identified the plot numbers over which rights were sought and the relevant work was identified and described [ER 6.8.6].
- 6.54. The ExA notes that PPs for the benefit of Network Rail Infrastructure Limited were included in Schedule 14, Part 4 of the dDCO submitted with the application [APP-034]. At Table 2.2 of its Protective Provisions and Commercial Side Agreements Tracking List [REP7-020], the Applicant advised that these had been agreed with Network Rail Infrastructure Limited. In the penultimate version of the dDCO [REP8-004], the PPs at Schedule 14, Part 4, paragraphs 30(1), 30(6) and 30(7) were revised for reasons given in the accompanying Applicant's Schedule of Changes to the Draft Development Consent Order [REP8-022]. The Applicant also submitted an application under s127 of the PA2008 in respect of rights in Network Rail Infrastructure Limited land [REP8-037] [ER 6.8.12].
- 6.55. The Applicant submitted an application under s138 of the PA2008 [REP9-006]. Network Rail Infrastructure Limited was one of the Statutory Undertakers listed in the schedule forming part of the application. The Applicant said that it did not anticipate that there would be any interference with Network Rail Infrastructure Limited's rights under the Electronic Communications Code or apparatus to which s138 of the PA2008 applies. Nevertheless, in the absence of agreement between the parties, the Applicant considered it necessary to seek associated CA powers in the dDCO [REP9-006] to ensure that it would be able to deliver the Proposed Development in a comprehensive manner.
- 6.56. The Applicant's position at the end of the Examination was that s127 and s138 of the PA2008 were engaged in respect of the Proposed Development's interface with Network Rail Infrastructure Limited interests ([REP10-012], pages 2 and 3 and [REP10-016]) as set out in

its Examination submissions under s127 [REP8-037] and s138 ([REP9-066], page 13) [ER 6.8.15].

- 6.57. Having considered Network Rail Infrastructure Limited evidence, the ExA is satisfied that the tests in s127(1)(a), s127(1)(b) and s127(1)(c) of the PA2008 are met [ER 6.8.17]. As no land owned by Network Rail Infrastructure Limited needs to compulsorily acquired, only rights over that land, s127(2) and s127(3) of the PA2008 are not engaged [ER 6.8.18].
- 6.58. The Secretary of State can be satisfied that the requirements of s127(5) and s127(6) of the PA2008 are complied with [ER 6.8.20]. Based on both parties' evidence, s138(1) of the PA2008 applies. In respect of Network Rail Infrastructure Limited's rights and apparatus, the application under s138 of the PA2008 [REP9-006] was made on a precautionary basis, subject to the need case set out at paragraph 1.3.4 thereof.
- 6.59. Taking account of the nature of the proposed works set out in Schedule 1 of the dDCO [REP9-006] and shown on the Work Plans [APP-010], together with inclusion of the PPs for Network Rail Infrastructure Limited's benefit at Schedule 14, Part 4 of the DCO, Network Rail Infrastructure Limited's rights would not be affected to the detriment of its ability to carry out its undertaking. In the absence of powers for the Applicant to extinguish the Statutory Undertaker's rights or remove its apparatus, the works associated with the Proposed Development might be unreasonably delayed or not completed. Accordingly, the test in s138(4) of the PA2008 is satisfied [ER 6.8.21].

Royal Mail

- 6.60. The ExA notes that the Applicant sought TP of rights over land in which Royal Mail has a legal interest (Book of Reference Parts 2 and 3). It enjoys rights in respect of apparatus over Plot 22-08 at Church Road, Twinstead in which the Applicant sought rights under Class 7 (Temporary Use for Access). The plot comprises 1,299 m² of public road and verges. TP was sought to facilitate access to existing pylons 4YL076 and 4YL076, part of Work No 10 – modifications to the transmission electric line and connection to the Grid Supply Point Substation, as set out at Schedule 1 of the DCO [REP9-006], the Land Plans [REP9-004] and Work Plans [APP-010] [ER 6.8.72].
- 6.61. Royal Mail's submissions made no specific mention of the plot in which it has a legal interest and of which the Applicant wanted to take TP, or of PPs in Schedule 14, Part 2 of the dDCO for the protection of operators of electronic communications code networks [ER 6.8.73].
- 6.62. Royal Mail was included in the Schedule to the application under s138 of the PA2008, Statutory Undertakers Telecommunications Operators' Rights and Apparatus [REP9-066], though the Applicant said that no apparatus was anticipated to be removed or altered [ER 6.8.74].
- 6.63. The ExA notes that Royal Mail was not listed in Appendix B to the Statement of Reasons, Schedule of Negotiations with Land Interests ([APP-040] and [REP9-015]). Taken together with what the Applicant stated in the Schedule to the application under s138 of the PA2008 suggests to the ExA that it was included on a purely precautionary basis [ER 6.8.75].

Other undertakers included in the PA2008 s138 application

- 6.64. The schedule to the Applicant's application under s138 of the PA2008, Statutory Undertakers Telecommunications Operator's Rights and Apparatus [REP9-066], listed

Statutory Undertakers whose rights or apparatus might be interfered with as a result of the Proposed Development. All are included in the Book of Reference [REP9-016] and the Statement of Reasons ([REP9-011], section 8.3) [ER 6.8.77].

6.65. In addition to the Statutory Undertakers already considered, the following were included in the Schedule, which identified the relevant rights to be extinguished or relevant apparatus to be removed or altered:

- BT Openreach;
- Gigaclear Limited;
- UKPN;
- Virgin Media Limited; and
- Vodafone Limited [ER 6.8.78].

6.66. None submitted representations to the Examination. Rule 17 requests issued to them afforded each the opportunity to comment on the s138 application under the PA2008 [PD-013]. No responses were received [ER 6.8.79].

6.67. The schedule also included Pivoted Power LLP, which withdrew its representations by letter of 4 March 2024 [REP10-026], subsequent to the issue of the Rule 17 request [PD-019] affording it the opportunity to comment on the application under s138 of the PA2008 [ER 6.8.80]. Cadent Gas Limited was also listed on the Schedule. It had withdrawn its representations by letter of 21 February 2024 [AS-012], prior to receipt of the application under s138 of the PA2008 on 23 February 2024. It did not engage with the Rule 17 request [PD-013] that gave it the chance to respond to that application [ER 6.8.81].

The Environment Agency

6.68. Whilst the Environment Agency did not make a representation or objection, the ExA notes that the Environment Agency's concern related to impact on maintenance activities that might result from the proposed temporary bridge that would cross over part of the Bures to Cornard flood banks. These were raised defences built on the river's edge to keep flood waters off arable land. As these defences do not provide flood protection to people and property, they do not attract any recurring maintenance funding, so the Environment Agency does not carry out any recurring maintenance activities on these defences except an annual visual inspection for condition. It said that access would need to be available for this to take place [ER 6.8.83].

6.69. The ExA notes that the Access, Rights of Way and Public Rights of Navigation Plans showed the proposed temporary closure of public right of navigation on the River Stour through Plots 20-20 and 20-25 [APP-012]. Chapter 12 Traffic and Transport in the Applicant's ES said that there would be short term disruption to navigation along the River Stour for safety reasons during proposed lowering of the 132kV conductors and during installation and removal of the temporary bridge. These disruptions were anticipated to be short term (i.e., up to a week) ([APP-080], paragraph 12.3.8). The CEMP provides an undertaking that the Applicant would notify the Environment Agency at least one month prior to activities that affect the 'Navigation Envelope' of the River Stour, that the notification would contain sufficient information to enable it to understand the necessity of the closure and include

details of - amongst other things - the nature and duration of the works ([REP9-033], paragraph 2.5.2). This commitment was agreed between the parties on 8 December 2023, as shown in the signed SoCG that advised that there were no matters outstanding or still under discussion between the parties [REP6-019] [ER 6.8.86].

- 6.70. The Environment Agency would have advance notice of the timing and duration of works that would affect Plot 20-20 through the provisions of the CEMP, secured by Requirement 4(2)(a) of the dDCO [REP9-006]. Therefore, by prior arrangement and despite the extinguishment of its right of access, there is no apparent practical reason why Environment Agency would not be able to programme its annual inspection to avoid the works associated with installation of the temporary bridge over the River Stour. The proposed extinguishment of the right of access is necessary for the purpose of carrying out the development to which the Order relates, in compliance with s138(4) of the PA2008 and Environment Agency would not be affected to the detriment of its ability to carry out its undertaking [ER 6.8.87].

TC East Anglia One OFTO Limited

- 6.71. TC East Anglia One OFTO Limited did not make a representation but was issued with a Rule 17 request [PD-014] asking it to provide any response to the application under s138 of the PA2008, Statutory Undertakers Telecommunications Operators' Rights and Apparatus [REP9-066]. It did not respond [ER 6.8.88].
- 6.72. The Applicant anticipated that an interface agreement would be entered into once commercial terms had been agreed between the parties. It said that HoTs for the interface agreement were substantially agreed and that, so far as the Applicant was aware, there were no commercial or other substantive matters remaining outstanding. It also noted that the parties were committed to agreeing the form of interface agreement as expeditiously as possible following the close of the Examination [REP10-012] [ER 6.8.91]. This was consistent with the signed SoCG between the parties [REP10-018], which gave useful background information to the East Anglia One project and its relationship with the Proposed Development [ER 6.8.92].
- 6.73. The ExA agrees with the Applicant's conclusion that this interface would be limited [ER 6.8.98].
- 6.74. Subsequently, the matters agreed between the parties [REP10-008] included:
- TC East Anglia One OFTO Limited had no objection to the principle of the Proposed Development.
 - The parties could see no reason why the Proposed Development and East Anglia One could not be implemented and operated without conflict with one another.
 - The parties agreed to continue discussing landscape mitigation in the areas of land in which they have an interest (located within the vicinity of all that land that may be required for the Proposed Development and falls within its Order Limits). Meanwhile, if any of East Anglia One's existing landscape planting was removed for the Proposed Development, it would need to be replaced and further discussions would be required on the subsequent maintenance of any replacement planting over a ten-year period.

- The parties agreed on the technical interface between the two respective projects and broadly on the items that would need to be included in the interface agreement, which was anticipated shortly after the close of Examination [ER 6.8.99].
- 6.75. Details of the works associated with the Proposed Development that may interface with East Anglia One's development were set out in the application under s138 of the PA2008 ([REP9-066], paragraph 2.3.4). The extinguishment of TC East Anglia One OFTO Limited's rights would be necessary for the purpose of carrying out the development to which the Order relates. In the absence of powers for the Applicant to extinguish such rights or remove or reposition such apparatus, the works associated with the Proposed Development could not be completed [ER 6.8.101].
- 6.76. Were agreement not reached, there is nothing in the PPs in Schedule 12, Part 1 of the dDCO [REP9-006] that would address the issue of mitigation planting that is to be subject of the proposed interface agreement. Therefore, were the Proposed Development to go ahead, TC East Anglia One OFTO Limited might be in breach of the Order granting it development consent in respect of the mitigation planting [ER 6.8.102].
- 6.77. However, unlike s127 of the PA2008, there is nothing in s138 that empowers the ExA to consider whether allowing interference with the right to be acquired would be detrimental to TC East Anglia One OFTO Limited's undertaking. Therefore, there is no reason to recommend to the Secretary of State that powers under s138 should be denied in this instance [ER 6.8.103].

The ExA's Conclusions on the s138 application

- 6.78. Schedule 14, Part 1 of the dDCO [REP9-006] provides protection for electricity, gas, water and sewerage undertakers and Part 2 for operators of electronic communications code networks [ER 6.8.103]. S138(1) of the PA2008 has effect as the dDCO would authorise the acquisition of land (compulsorily or by agreement) and there subsists over the land a relevant right or there is on, under or over the land relevant apparatus. S159 of the PA2008 defines 'land' as including any interest in land. Whilst not all these Statutory Undertakers submitted representations to the Examination, in accordance with s138 of the PA2008, the Secretary of State must be satisfied that the extinguishment of the relevant right or the removal of the relevant apparatus is necessary for the purposes of carrying out the development to which the Order relates [ER 6.8.104].
- 6.79. The ExA is persuaded that that the Secretary of State can be satisfied that extinguishment of the relevant right or the removal of the relevant apparatus would be necessary for the purpose of carrying out the development to which the Order relates [ER 6.8.105].
- 6.80. The ExA notes that the Applicant is seeking to negotiate with some of the Statutory Undertakers identified in the schedule to the application made under s138 of the PA2008 to acquire the rights necessary for the Proposed Development, and to manage any interfaces between the project and their apparatus or rights vested on, under or over land within the Order Limits, by private treaty. However, in the absence of voluntary agreement between the parties, the associated CA powers that the Applicant seeks are needed to ensure that it would be able to enforce powers consistently and uniformly to deliver the project in a comprehensive manner. If acquisition of the required rights is not agreed between the parties, the ExA considers that the Secretary of State can be assured that the requirements of s138(4) of the PA2008 are satisfied [ER 6.8.106].

6.81. The Book of Reference [REP9-016] reported that no land within the Order Limits had been identified as Crown land [ER 6.9.1].

Special category land: Open Space

6.82. The ExA notes that the Applicant sought rights over special category land, more specifically classed as open space ([REP3-011] section 2.1.4). The Book of Reference describes the types of open space [REP9-016] in Part 5. The relevant plots of land are included in the Book of Reference and on the Land Plans [REP9-004] and the Special Category Land Plans [APP-009] [ER 6.10.3].

6.83. Open Space is defined in the Acquisition of Land Act 1981 as, 'any land laid out as a public garden, or used for the purposes of public recreation, or land being a disused burial ground [ER 6.10.5]. As such, the Applicant said that it had taken a precautionary approach to include all land that could be considered open space [ER 6.10.6].

6.84. Open space within the Order Limits and in respect of which powers of CA were sought was shown shaded blue-green on the Special Category Land Plans [APP-009] and listed in Table 8.1, Special Category Land of the Statement of Reasons [REP9-011]. These described the four parcels of land that the Applicant identified as open space, the plot numbers involved, activities to be undertaken and CA classes sought. The four areas were:

- Hintlesham Golf Course;
- Hintlesham Wood;
- Hadleigh Railway Walk; and
- Assington Green [ER 6.10.7].

6.85. Special parliamentary procedure would be engaged unless the Secretary of State was satisfied that one of a number of exemptions could be shown to apply. The potential exemptions are defined in s132 of the PA2008. In this case, only rights (for overhead lines, underground cables, access and BNG) were being sought over land identified as open space. No CA of land was sought. Therefore, the exemption that the Applicant sought to rely on is that set out in s132(3) of the PA2008, which required that the Order land, when burdened with the Order right, would be no less advantageous than it was before, to the following persons:

- the persons in whom it is vested;
- other persons, if any, entitled to rights of common or other rights; and
- the public [ER 6.10.8].

6.86. The Applicant considered that that the Secretary of State could be satisfied that the Proposed Development would not cause the land to be less advantageous to these parties and hence could confirm by certificate that special parliamentary procedure would not apply [ER 6.10.9]. In support of this contention, the Applicant supplemented the evidence in the Statement of Reasons with a Special Category Land Report. This provided an assessment of powers of the CA of rights sought in respect of each of the four parcels that it considered to be open space, based on its precautionary approach ([REP3-011] Chapter 4). It described

the current land use of each, why the CA of rights in the land were needed and its rationale for the conclusion in each instance that the land would be no less advantageous when burdened with the rights sought [ER 6.10.10].

- 6.87. The Applicant included land at Hintlesham Golf Course as open space (Plots 2-54, 3-06, 3-13, 3-15, 3-16, 3-17, 3-18, 3-20, 3-22, 3-23). CA Class 3 and 4 rights were sought therein [REP9-016]. The land is part of a golf course and was included on a precautionary basis.
- 6.88. The current land use of Hintlesham Great Wood is that of a private, mixed deciduous woodland, which is owned and managed by the RSPB. It is a SSSI that extends to 118.1 hectares. There are public rights of way and bridleways passing through. There is signage and information boards informing the public where they can access; along with private paths, that are not open to the public but used for operational purposes. The existing 400kV line over that land is to be reconducted and possibly the towers to be modified [REP 9-011, Table 8.1].
- 6.89. The land of the Hadleigh Railway Walk is a two mile stretch of the trackbed, from the station site in Hadleigh to the site of Raydon Wood Station, and is a Local Nature Reserve. The existing 132kV line over the land is to be replaced [REP 9-011, Table 8.1].
- 6.90. The land at Assington Green was included on a precautionary basis. It is privately owned grazing land, orchard and wet deciduous woodland. It partially overlaps what was designated in the Assington Neighbourhood Plan as Mill Farm Land Local Green Space but is no longer designated. A public right of way borders the southern and western extents of the designated land, outside the designation, but the land itself is not publicly accessible. The existing 400kV overhead line oversails the northern boundary of the land and the 132kV overhead line also oversails the land, with two pylons on the land itself [ER 6.10.12]
- 6.91. The ExA notes that the Proposed Development would remove the existing 132kV line (which oversails the northern boundary of the land) and pylon PCB 67, and build a new transmission tower and install conductors, in a similar alignment and location, approximately 50m to the south). The proposed new overhead line would run broadly parallel to the existing transmission line and a new pylon might be sited within the designation, subject to the limits of deviation as they might be applied in this location. The construction activities would be short term, each envisaged to be in the region of six weeks [ER 6.10.13].
- 6.92. The Applicant said that the conductors do not (and would not) impact the usage of the open space (being space used and enjoyed at ground level only). The proposed pylon would replace an existing pylon. The proposed pylon would only make contact with the ground at its four corners and would not materially alter the ability of the open space to be enjoyed as such [ER 6.10.14]. The Applicant added that discussions were ongoing in relation to agreement to acquire the necessary interests in the Open Space land by agreement. However, if voluntary agreement was not possible, in respect of all four parcels of land, they would be no less advantageous when burdened with the rights sought, in compliance with s132 of the PA2008 [ER 6.10.15].
- 6.93. Notwithstanding pursuance of voluntary agreements, the Applicant still sought powers to CA rights over special category land through the dDCO as they would enable it to deliver its statutory and contractual duties without potential delay, if for any reason the voluntary acquisition of rights were ultimately unsuccessful. Without the powers of acquisition being compulsorily, there would be a risk that the urgent national need for the project could not be met because the land and rights required in the Order land may not be assembled [ER

6.10.18].

The ExA's conclusions

- 6.94. The Order land includes land that the Applicant identified as special category land, more specifically open space. Although the ExA had misgivings about whether two of the four parcels of special category land at Hintlesham Golf Course and Assington Green, in which the Applicant seeks to acquire rights, satisfy the definition of open space at s19(4) of the Acquisition of Land Act 1981, the applicable legal tests were applied to all on a precautionary basis and to assist the Secretary of State's consideration of the issue. As the Applicant was seeking rights over the land rather than to compulsorily acquire it, the tests set out in s132 of the PA2008 were engaged [ER 6.10.61].
- 6.95. S132(2) of the PA2008 exempts an Order granting development consent from being subject to special parliamentary procedure if, amongst other things, the Secretary of State is satisfied that one of subsections (3) to (5) applies. As the Applicant sought to rely on s132(3) of the PA2008, those tests were applied to each of the four parcels of land that it considered to be open space [ER 6.10.62].
- 6.96. In respect of all four, the ExA considered the Proposed Development to be consistent with s132(3)(a), (b) and (c) of the PA2008. Accordingly, on the basis of s132(2)(a), an exemption to special parliamentary procedure is merited in respect of the proposed CA of rights over this land provided that s132(2)(b) is observed [ER 6.10.63].

The Secretary of State's Conclusions

- 6.97. The Secretary of State has taken into consideration the case made for compulsory acquisition and temporary possession of land for the Proposed Development, as well as the conclusions drawn by the ExA on this matter. These matters include areas of funding, consideration of individual objections, statutory undertaker land and the special category of open space.
- 6.98. The Secretary of State is satisfied that the tests would comply with s122 and s123 of the PA2008 and notes that the land sought by the Applicant is in each case proportionate, necessary and in the public interest to facilitate the construction and operation of the Proposed Development. The Secretary of State is satisfied that the acquisition and temporary possession in each case is justified when considering the extent of land required, alternatives, funding and the use and purpose of the land and rights.
- 6.99. Cadent Gas Limited, Pivoted Power LLP, Network Rail Infrastructure Limited, East Anglia THREE Limited, Anglian Water Services Limited, Royal Mail, BT Openreach, Gigaclear Limited, UKPN, Virgin Media Limited and Vodafone Limited are statutory undertakers. The ExA concluded that the powers sought in relation to Statutory Undertakers meet the conditions set out in s127 and s138 of the PA2008 and the CA Guidance. The Secretary of State agrees and has concluded that with the inclusion of the PPs contained in the Order the compulsory purchase powers will not cause serious detriment to the carrying on of the relevant undertaking.
- 6.100. The Secretary of State is satisfied that the extinguishment or removal of relevant rights and relevant apparatus is necessary for the purpose of carrying out the development to which the order relates, therefore, the test under s138 PA2008 is met.

- 6.101. Based on the information and evidence, the Secretary of State shares the ExA's doubts as to whether the parcels described as special category land, particularly those at Hintlesham Golf Course and Assington Green satisfy the definition of open space at s19(4) of the Acquisition of Land Act 1981. The Secretary of State also has doubts as to whether the land at Hintlesham Woods satisfies the definition of open space at s19(4) of the Acquisition of Land Act 1981. Nevertheless, the Secretary of State has, on a precautionary basis, gone on to consider the tests in s132 of the PA2008 and CA Guidance and agrees that the powers sought in relation to all four parcels of special category land identified meet the conditions set out in s132(3) of the PA2008 and that special parliamentary procedure is not required.
- 6.102. The Secretary of State has no reason to believe that the grant of the Order would give rise to any unjustified interference with human rights so as to conflict with the provisions of the Human Rights Act 1998.

7. Secretary of State's Consideration of the Planning Balance and Conclusions

- 7.1. The Secretary of State acknowledges the ExA's recommendation that the Secretary of State makes The National Grid (Bramford to Twinstead Reinforcement) Order in the form attached at Appendix D to the ExA's Report.
- 7.2. The Secretary of State agrees with the ExA's conclusions and the weight it has ascribed in the overall planning balance in respect of the following issues:
- need for the Proposed Development – great positive weight (see paragraph 4.12) [ER 5.2.2];
 - air quality and emissions – neutral weight [ER 5.2.2];
 - biodiversity and ecology – moderate negative weight (see paragraph 4.32) [ER 5.2.16];
 - good design – little negative weight [ER 5.2.22];
 - greenhouse gas emissions – little negative weight [ER 5.2.25];
 - historic environment – moderate negative weight (see paragraph 4.44) [ER 5.2.35];
 - landscape and views – little negative weight [ER 5.2.46];
 - land use, soil and geology – moderate negative weight (see paragraph 4.55) [ER 5.2.49];
 - noise and vibration – little negative weight [ER 5.2.57];
 - public rights of way – moderate negative weight [ER 5.2.59];
 - socio-economics and community issues – neutral weight [ER 5.2.63];
 - the water environment – neutral weight [ER 5.2.66];
 - traffic, transport and highway safety – neutral weight [ER 5.2.76; and
 - cumulative effects – little negative weight [ER 3.16.10].
- 7.3. The weights ascribed by the Secretary of State to the planning issues raised in the ExA's Report do not differ from those ascribed by the ExA. There are some matters for which the Secretary of State has further commentary to add, beyond that set out in the ExA's Report. Where this is the case, the Secretary of State has provided that additional commentary above.
- 7.4. All NSIPs will have some potential adverse impacts. In the case of the Proposed Development, most of the potential impacts have been assessed by the ExA as being in

accordance with the 2011 NPS EN-1 and NPS EN-5, and the newly designated 2024 NPSs, subject in some cases to suitable mitigation measures being put in place to minimise or avoid them completely as required by NPS policy.

- 7.5. The Secretary of State generally agrees with the ExA that the management plans are sufficient to secure appropriate mitigation for the potential adverse impacts of the Proposed Development. However, the Secretary of State also notes that the management plans remain relatively high-level and would benefit from greater detail during the detailed design and pre-construction survey phase. The Secretary of State notes the concerns held by the local authorities regarding the Applicant's approach to securing final management plans at this stage, and that these concerns have led to the local authorities objecting to the making of the Order [REP9-072] [REP10-018]. The Secretary of State is not persuaded by the Applicant's arguments [REP7-022] [REP7-025] [REP9-064] [REP10-006] that the approval of the Local Authority for these plans is neither necessary nor appropriate and could cause undue delay to the Proposed Development timeline. The Secretary of State has therefore amended Requirement 4 and made other consequential amendments in the DCO to ensure that the relevant management plans are considered outline and must be approved by the relevant Local Authority post-consent. The Secretary of State considers that Schedule 4 of the DCO secures an appropriate process for the timely approval of the management plans and encourages the Applicant and local authorities to engage proactively and pragmatically in this regard.
- 7.6. For the reasons given in this letter, the Secretary of State concludes that the benefits of the Proposed Development outweigh its potential adverse impacts. The Secretary of State does not believe that the national need for the Proposed Development as set out in the relevant NPSs is outweighed by the Proposed Development's potential adverse impacts, as mitigated by the proposed terms of the Order. The Secretary of State has therefore accepted the ExA's recommendation that consent should be granted for the Bramford to Twinstead Reinforcement.
- 7.7. In reaching this decision, the Secretary of State confirms that regard has been given to the ExA's Report, the relevant Development Plans, the two joint LIRs, the 2011 and 2024 NPSs, and to all other matters which are considered important and relevant to the Secretary of State's decision as required by section 104 of the PA2008. The Secretary of State confirms for the purposes of regulation 4(2) of the EIA Regulations that the environmental information as defined in regulation 3(1) of those Regulations has been taken into consideration.

8. Other Matters

Equality Act 2010

- 8.1. The Equality Act 2010 includes a public sector "general equality duty" ("PSED"). This requires public authorities to have due regard in the exercise of their functions to the need to eliminate unlawful discrimination, harassment and victimisation and any other conduct prohibited under the Equality Act 2010; advance equality of opportunity between people who share a protected characteristic and those who do not; and foster good relations between people who share a protected characteristic and those who do not in respect of the following

“protected characteristics”: age; gender; gender reassignment; disability; marriage and civil partnerships²; pregnancy and maternity; religion and belief; and race.

- 8.2. In considering this matter, the Secretary of State (as decision-maker) must pay due regard to the aims of the PSED. This must include consideration of all potential equality impacts highlighted during the Examination. There can be detriment to affected parties but, if there is, it must be acknowledged and the impacts on equality must be considered.
- 8.3. The Secretary of State has had due regard to this duty and has not identified any parties with a protected characteristic that might be discriminated against as a result of the decision to grant consent to the proposed Development.
- 8.4. The Secretary of State is confident that, in taking the recommended decision, he has paid due regard to the above aims when considering the potential impacts of granting or refusing consent and can conclude that the Proposed Development will not result in any differential impacts on people sharing any of the protected characteristics. The Secretary of State concludes, therefore, that granting consent is not likely to result in a substantial impact on equality of opportunity or relations between those who share a protected characteristic and others or unlawfully discriminate against any particular protected characteristics.

Natural Environment and Rural Communities Act 2006

- 8.5. The Secretary of State notes the “general biodiversity objective” to conserve and enhance biodiversity in England, section 40(A1) of the Natural Environment and Rural Communities Act 2006 and considers the application consistent with furthering that objective, having also had regard to the United Nations Environmental Programme Convention on Biological Diversity of 1992, when making this decision.
- 8.6. The Secretary of State is of the view that the ExA’s Report, together with the Environmental Impact Assessment considers biodiversity sufficiently to inform the Secretary of State in this respect. In reaching the decision to give consent to the Proposed Development, the Secretary of State has had due regard to conserving biodiversity.

9. Modifications to the draft Order

- 9.1 Following consideration of the draft Order provided by the ExA, the Secretary of State has made the following modifications to the draft Order:
 - amended the definition of “maintain” to confirm that whilst part of the authorised development may be replaced, this definition does not cover the replacement of the whole of the development;
 - amended the definition “permit schemes” under article 1 (citation and commencement) to the draft Order which included an order for Suffolk County Council. This did not seem to be in force with the footnote left blank in the SI reference. The current definition has therefore been amended to include any relevant permit schemes;

² In respect of the first statutory objective (eliminating unlawful discrimination etc.) only.

- removed article 2(9) which amends the more usual reference to materially new or materially different effects. The reference to materially new or materially different effects does not prevent any changes which are beneficial for the environment, provided such changes do not result in significant effects that have not been previously identified and properly assessed in the environmental statement and article 2(9) does not appear to provide additional certainty to the interpretation of the phrase;
- removed paragraph 6 under article 3 (development consent etc. granted by the Order) from the draft Order. The power was broad and appeared to be captured elsewhere in the Order;
- moved paragraphs 4 to 6 from article 8 (application of the 1990 Act) to article 32 (time limit for exercise of authority to acquire land and rights compulsorily) and requirement 2 (paragraph 2) of schedule 3 (requirements). They operate in and are relevant to those locations of the draft Order;
- removed the original article 22 (removal of human remains) from the draft Order, which sought to mandate that the Applicant remove and rebury or cremate any human remains from burial grounds within the Order limits. There are no known burial grounds within the Order limits so the Secretary of State considers this article to be unnecessary;
- inserted paragraph 3 under article 22 (compulsory acquisition of land) to the draft Order to facilitate correct operation of Part 5 (powers of acquisition);
- inserted paragraphs 5 and 6 to article 24 (acquisition of subsoil or airspace only) to the draft Order because the compensation paragraphs were omitted;
- amended the wording in article 42 (statutory undertakers). The Secretary of State does not find the reasons given for departing from the usual provisions and applying the TCPA in this instance persuasive;
- amended the wording in article 46(7) (traffic regulation) to reflect the fact that article 46(6) is dealing with the expiration of a time limit rather than the exercise by the undertaker of a power under that article;
- inserted paragraph 8(b) to article 47 (felling or lopping) to the draft Order to include a time period for notice to be given;
- inserted article 58(2) (Arbitration) to the draft Order. This paragraph confirms arbitration does not apply to consents and approvals from the Secretary of State;
- deletion of requirement 2(1) of Schedule 3 to the draft Order. Commencement is already defined in article 2(1) which distinguishes pre-commencement work. The requirement as drafted appears to require two separate conditions to be met simultaneously and attempts to distinguish between begin and commence. This causes uncertainty and is not justified. Given the explanation in the Explanatory Memorandum that the authorised development must in any event be commenced it is not appropriate to create a second, separate period for beginning the development;
- amended Requirement 4 (paragraph 4) of Schedule 3 (Requirements) to the draft Order which detailed the status of the control document management plans. The amendments

ensure those management plans are approved by the relevant Local Authority as set out in paragraph 7.5 above;

- amending the time periods in Schedule 4 by which the relevant local authority must reply to an application seeking to consult or obtain further information from 3 to 7 days as the Secretary of State agrees that the original time periods appeared to be too short.
- 9.2 In addition to the above, the Secretary of State has made various changes to the draft Order which do not materially alter its effect, including changes to conform with the current practice for statutory instruments, changes in the interests of clarity and consistency and changes to achieve consistency with other DCOs.

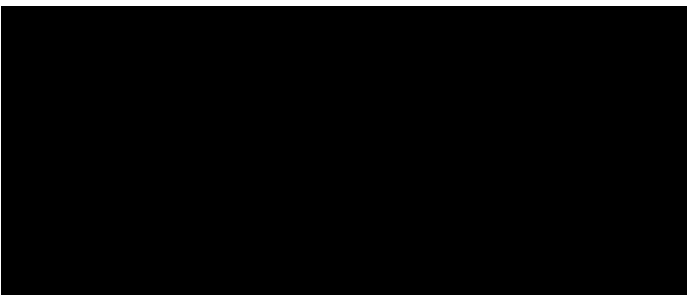
10. Challenge to decision

- 10.1. The circumstances in which the Secretary of State's decision may be challenged are set out in the Annex to this letter.

11. Publicity for decision

- 11.1. The Secretary of State's decision on this Application is being publicised as required by section 116 of the PA2008 and regulation 31 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.
- 11.2. Section 134(6A) of the PA2008 provides that a compulsory acquisition notice shall be a local land charge. Section 134(6A) also requires the compulsory acquisition notice to be sent to the Chief Land Registrar, and this will be the case where the Order is situated in an area for which the Chief Land Registrar has given notice that they now keep the local land charges register following changes made by Schedule 5 to the Infrastructure Act 2015. However, where land in the Order is situated in an area for which the local authority remains the registering authority for local land charges (because the changes made by the Infrastructure Act 2015 have not yet taken effect), the prospective purchaser should comply with the steps required by section 5 of the Local Land Charges Act 1975 (prior to it being amended by the Infrastructure Act 2015) to ensure that the charge is registered by the local authority.

Yours sincerely,



David Wagstaff OBE

Head of Energy Infrastructure Development

ANNEX A: LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118 of the Planning Act 2008, an Order granting development consent, or anything done, or omitted to be done, by the Secretary of State in relation to an application for such an Order, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the Planning Court during the period of 6 weeks beginning with the day after the day on which the Order or decision is published. The decision documents are being published on the date of this letter on the Planning Inspectorate website at the following address:

<https://national-infrastructureconsenting.planninginspectorate.gov.uk/projects/EN020002>
<https://national-infrastructureconsenting.planninginspectorate.gov.uk/projects/EN020002>

These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (0207 947 6655).

ANNEX B: LIST OF ABBREVIATIONS

Abbreviation	Reference
AA	Appropriate Assessment
AP	Affected Persons
AEoI	Adverse Effect on Integrity
BESS	British Energy Security Strategy
CA	Compulsory Acquisition
CEMP	Construction Environmental Management Plan
CoCP	Code of Construction Practice
DCO	Development Consent Order
dDCO	Draft Development Consent Order
EA	The Environment Agency
EIA	Environmental Impact Assessment
ES	Environmental Statement
ExA	The Examining Authority
HPI	Habitat of Principal Importance
HRA	Habitats Regulations Assessment
IP	Interested Party
IROPI	Imperative Reasons of Overriding Public Interest
LEMP	Landscape and Ecological Management Plan
LIR	Local Impact Report
LSE	Likely Significant Effect
MW	Megawatt
MWMP	Materials and Waste Management Plan
NE	Natural England
NPS	National Policy Statement
NSN	National Site Network
NSIP	Nationally Significant Infrastructure Project
PA2008	The Planning Act 2008
PSED	Public Sector Equality Duty
REAC	Register of Environmental Actions and Commitments
RIES	Report on the Implications for European Sites
RR	Relevant Representation
SAC	Special Area of Conservation
SoCG	Statement of Common Ground
SPA	Special Protection Area
TP	Temporary Possession